DECISIONS AND ORDERS

OF THE

NATIONAL LABOR RELATIONS BOARD

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In the Matter of REGISTER PUBLISHING CO., LTD. *and* SANTA ANA INTERNATIONAL TYPOGRAPHICAL UNION No. 579

Case No. C-2225.—Decided October 7, 1942

Jurisdiction: newspaper publishing industry.

Unfair Labor Practices

Discrimination: discharging unfair labor practice strikers by notifying union that their positions had been permanently filled by new employees who would not be displaced to afford positions to them.

Collective Bargaining: majority established by membership in union and participation in strike—refusal to bargain in good faith in effort to reach an agreement by: anticipatory refusal to reduce in writing any agreement which might be reached; submitting without justification counterproposals which meant a detraction from existing working conditions; refusal to arbitrate matters in dispute; stating during strike that it would "never sign with the union"; conditioning bargaining during strike by requiring that reinstatement of the strikers be considered on an "individual" basis and removing the basis for negotiations by permanently replacing the union members.

Remedial Orders: order to bargain collectively; order requiring reinstatement and back pay based not only upon fact to remedy unfair labor practices in discharging striking employees but also, and independently upon the ground that the strike was caused and prolonged by employer's refusal to bargain collectively.

Mr. Charles M. Ryan, for the Board.

Mr. Willis Sargent and *Mr. Paul Hart*, of Los Angeles, Calif., for the respondent.

Mr. Seth R. Brown, of Los Angeles, Calif., for the Union.

Mr. Bliss Daffan, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Santa Ana International Typographical Union No. 579, affiliated with the International Typographical Union, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California) issued its com-

plaint dated April 23, 1942, against Register Publishing Co., Ltd., Santa Ana, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondent (1) on or about March 1, 1940, and at all times thereafter, refused to bargain collectively with the Union which represented a majority of the respondent's employees within an appropriate unit: (2) since July 29, 1941, has refused to reinstate 20 named employees who had gone out on strike on May 1, 1941; and (3) by these acts and by criticizing and condemning unions as rackets and union members as racketeers; by criticizing and condemning the principles of collective bargaining; by questioning employees concerning the Union; by statements that unions have never benefited anyone and employees are better off without a union; by statements that it would never enter into a written signed contract with the union; and by promises of reward to employees if they would withdraw from membership in and activity on behalf of the Union; has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On May 6, 1942, the respondent filed its answer, in which it denied the jurisdiction of the Board and denied that it had engaged in the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held in Santa Ana, California, on May 7, 8, and 11, 1942, before Will Maslow, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a representative. All participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the Board's case, and again at the close of the hearing, the respondent moved to dismiss the complaint for want of jurisdiction and also because of the insufficiency of the proof. These motions were denied by the Trial Examiner. At the close of the hearing, motions by both the attorney for the Board and the respondent to conform the pleadings to the proof were granted by the Trial Examiner without objection. During the course of the hearing, the Trial Examiner made rulings on numerous other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The

rulings are hereby affirmed. At the close of the hearing, both the attorney for the Board and the respondent argued orally before the Trial Examiner. The respondent also submitted a brief to the Trial Examiner.

On June 11, 1942, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon all parties, in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act. He recommended that the respondent be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act, including the reinstatement with back pay of certain employees. Thereafter, on August 1, 1942, the respondent filed exceptions to the Intermediate Report. None of the parties requested leave to argue orally before the Board.

The Board has considered the exceptions filed by the respondent and, except as they are consistent with the findings of fact, conclusions of law, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

Register Publishing Co., Ltd., a California corporation, is engaged in the publication of a daily newspaper in Santa Ana, California, known as the Santa Ana Register, herein called the Register. During 1940 all the newsprint used by the respondent, amounting to 1,431,000 pounds, and valued at $34,636, was shipped to Santa Ana from Canada. During the same period miscellaneous materials and equipment valued at about $7,000 were likewise shipped from points outside the State of California to the respondent's plant in Santa Ana.

The respondent subscribes to the news services of the Associated Press, the United Press, and the International News Service; the greater part of the news of these services is gathered outside the State of California by these services and transmitted to the Register. This news constitutes about 12 percent of the total news appearing in the Register. In addition, the Register publishes a miscellany of special features, about 90 percent of which is furnished to it by feature services located outside the State of California. These features constitute about 8 percent of the total reading material of the Register.

About 6 percent of the total revenue of the respondent is derived from national advertisers located outside the State of California. This advertising is transmitted to the Register by agencies likewise located outside the State of California. The respondent's total

annual gross revenue is more than $300,000, two-thirds of which comes from its advertising and the remainder from its subscribers.

There has been no substantial change since 1940 in the operations of the respondent described above, except for a decline in national advertising.

The respondent employs from 80 to 85 persons, about 25 of whom were employed in April 1941, as printers or apprentices.

II. THE ORGANIZATION INVOLVED

Santa Ana International Typographical Union No. 579, affiliated with the International Typographical Union which was formerly affiliated with the American Federation of Labor but is now unaffiliated, is a labor organization admitting to membership employees in the composing room of the respondent's plant.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

The Register has been published in Santa Ana since at least 1909. From 1909 to about 1928 it was owned by one Baumgartner. In 1928 it was acquired by the respondent, the then chief stockholder being J. F. Burke. In 1935 the Hoiles family, the present stockholders and publishers, purchased the stock of the respondent and have held it ever since.

From 1909 to 1935 the working conditions of the printers in the composing room were governed by an oral contract between the Union and the various owners of the Register. From 1935 to 1937 while the Hoiles family was in control, the terms of the prior oral contract were observed by the Hoiles although the oral contract was not formally renewed.

In 1937 the Union met with the respondent, the publishers of a competing newspaper in the county, known as the Santa Ana Journal, and the owners of the commercial job printing shops in Santa Ana, and concluded a new agreement. The commercial job printers signed the agreement, but the respondent and the publishers of the Santa Ana Journal refused to do so. The terms of the oral agreement with the respondent were, however, reduced to writing. By its terms this agreement was to remain in force until March 1939 and provisions were contained therein providing for a closed shop and for a wage increase from 87½ cents an hour to 92 cents an hour at the beginning of the period covered by said agreement, and an additional increase to $1 an hour before the expiration date thereof; limiting the number of apprentices to three and specifying the type of work which they could do; and providing for a workweek of 5 days of 7½ hours, and for the

payment of time and a half for all work in excess of 7½ hours on a given day with an option given the respondent to change the workweek to five 8-hour days by giving 2 weeks' notice to the Union. Likewise, this agreement provided that the constitution and bylaws of the Union were made a part thereof.

In March 1939, upon the expiration of the agreement, the Union met with the respondent in an attempt to negotiate a new agreement. While the record is not entirely clear regarding these negotiations, apparently the 1937 agreement was continued in existence by mutual agreement for a period of 1 year, after an effort on the part of the Union to obtain new terms proved unsuccessful.[1]

B. *The refusal to bargain with the Union*

1. The appropriate unit

The complaint alleges, and the respondent's answer admits, that all the employees in the composing room of the respondent's Santa Ana plant constitute a unit appropriate for the purposes of collective bargaining. We find that all the employees in the composing room of the respondent's Santa Ana plant have, at all times material herein, and do now, constitute a unit appropriate for the purposes of collective bargaining, and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation of a majority in the appropriate unit

The complaint alleges that prior to March 1, 1940, and at all times thereafter, a majority of the employees in the respondent's composing room designated the Union as their representative for the purposes of collective bargaining with the respondent and therefore the Union has been since March 1, 1940, and is now, the exclusive representative of all said employees for the purposes of collective bargaining. The respondent's answer admits that up to April 30, 1941, the Union was such exclusive representative.

On the night of April 30, 1941, the employees in the respondent's composing room went on strike, and the strike has continued ever since.

[1] Seth R. Brown, a representative of the International Typographical Union, testified with respect to the negotiations in 1939, that "I guess they didn't come to an agreement on the terms and finally it was allowed to continue" until March of 1940. George Duke, vice president of the Union, testified that in March 1939, "there was a brief negotiation during which time no change in the contract was made, although requested. I believe at that time, although I was not present, I believe a request was made that a contract be signed and continue for another year." Duke was then asked if he knew whether or not the agreement was continued in existence from March 1939 to March 1940 and replied, "Yes, because I was present at the union meeting at which we agreed to continue for another year by action of the membership."

As found below, this strike was occasioned by the respondent's unfair labor practices in refusing to bargain with the Union. The employees who were in the respondent's employ and whose work ceased as a result of the respondent's unfair labor practices, therefore, remained employees within the meaning of Section 2 (3) of the Act.

We find that on March 1, 1940, and at all times thereafter, the Union was and that it now is the duly designated representative of a majority of the employees in the appropriate unit, and that, pursuant to Section 9 (a) of the Act the Union was and is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The negotiations in 1940

In March 1940 the Union submitted its proposals for a new contract, requesting a wage rate of $1.15 an hour and 1 week's vacation with pay for all printers. As shown above, the existing contract provided for $1 an hour and contained no provision for vacations. Early in March 1940 C. H. Hoiles, the secretary-treasurer of the respondent and son of R. C. Hoiles, its president, met with representatives of the Union and rejected the proposals, stating that since the respondent paid overtime to its printers, it was opposed as a matter of principle to granting vacations with pay. Hoiles also stated that the respondent would not increase the hourly rate of pay of the printers. The Union then requested the respondent to submit counterproposals. Sometime later in March, the respondent proposed that there be no discrimination between union and non-union members in the plant;[2] that it be given "full control" over apprentices, thereby eliminating all restrictions such as those contained in the previous agreements relating to the number of apprentices it could hire and the type of work which they could perform; that the rate of pay of "straight matter operations"[3] be decreased from the hourly rate of $1, provided in the 1939 agreement, to 75 cents; and that the workweek be increased to 40 hours. Each of the points set forth in the respondent's proposal meant a detraction from existing conditions of the employees affected—then numbering 22 operators and 3 apprentices.

Upon receipt of the respondent's proposals, the Union requested the assistance of Brown, a former vice president of the International

[2] C. H. Hoiles testified that the respondent meant by this proposal that it desired that the previously established closed shop be abolished.

[3] A "straight matter operator," as the name implies, is a printer qualified only to set up on a typesetting machine straight editorial matter, as distinguished from the more difficult printing, such as setting up advertising matter and market quotations, which are customarily handled by "combinations operators" who are capable of doing any sort of work in a composing room. Duke testified that there were three combination operators in the respondent's employ.

Typographical Union, herein called the ITU, who thereupon came to Santa Ana to conduct negotiations with the respondent relative to a collective bargaining agreement. Brown met with C. H. Hoiles on March 20, 1940, to discuss the respondent's counterproposals. Hoiles stated that the respondent wished to have full control of the work done by the apprentices during their 6-year apprenticeship and specifically that apprentices should be allowed to work on the linotype machines prior to the last year of their 6-year apprenticeships. In reply Brown quoted from the bylaws of the ITU which he contended forbade the inclusion of such provisions in the contract of a subordinate local. Brown likewise opposed the respondent's proposal that the wages of straight-matter operators be set at 75 cents an hour, contending that this was below the minimum rate of $1 an hour established for all operators under the prior agreement. The parties also discussed, in detail, the Union's proposal regarding vacations with pay. No agreement was reached on any terms at this meeting. On March 27, 1940, Brown and Hoiles met again and continued their discussions.

On April 15, 1940, Brown and Duke, vice president of the Union, met with Hoiles. Brown offered to submit to the Union for ratification a provision that the hourly rate of the operators be increased to $1.06 an hour, a drop from the original demand of $1.15 an hour. Hoiles rejected this offer. Hoiles also reiterated his position expressed at the prior conferences that complete control of the apprentices be vested in the respondent, and Brown repeated his previous assertion that such a provision was contrary to the laws of the ITU. Brown then suggested that the matters in dispute between the Union and the respondent be arbitrated.[4] This proposal was also rejected by Hoiles. Duke then stated that if an agreement were reached, the Union desired it to be reduced to writing and signed by the parties. Hoiles replied that the respondent would not consider signing a contract, that his word was good, and that the Union did not need to fear that he would violate an oral agreement. The meeting then ended with a request by Brown that the respondent submit new counterproposals.

On May 3, Brown, Duke, and C. H. Hoiles met again. The representatives of the Union asked Hoiles if the respondent had any counterproposals to submit and were advised that it did not. Duke then presented a new proposal on behalf of the Union providing for a grad-

[4] There is some conflict between the testimony of Brown and Hoiles on this point. Brown testified that he requested that "all" matters in dispute between the parties be arbitrated, whereas Hoiles testified that the Union's willingness to arbitrate was restricted to the wage issue. The bylaws of the ITU forbid arbitration of is "general laws" which include provisions relating to apprentices. Under these circumstances, we find that Brown's proposal of arbitration was restricted to those matters which could be arbitrated under the laws of the ITU and that this was the respondent's understanding regarding the proposal.

uated wage scale and graduated provisions for vacations with pay, as follows:

$1.03 an hour to September 1, 1940
1.04 an hour from September 1, 1940, to March 1, 1941
1.05 an hour from March 1, 1941, to September 1, 1941
1.06 an hour from September 1, 1941, to March 1, 1942
1.08 an hour from March 1, 1942, to March 1, 1943.
2 days vacation with pay in 1940
3 days vacation with pay in 1941
5 days vacation with pay in 1942
5 days vacation with pay in 1943.

The Union again requested that any agreement reached between the parties be reduced to writing and signed and Hoiles reiterated his previous assertions that the respondent would not sign a contract with the Union. However, Hoiles agreed to take the Union's modified demands under advisement. This was the second time the Union had lowered its original demands.

On May 16, 1940, the parties met again and C. H. Hoiles rejected the Union's modified proposal, stating that he could not grant a wage increase, no matter how small, because his other employees would then ask for a similar increase. The Union again requested the respondent to submit counterproposals but Hoiles stated that it had none.

The Union met that evening and decided to hold in abeyance the entire negotiations with the respondent. No further conferences with the respondent were held until April 1, 1941. However, the terms of the oral agreement, which expired in March 1940, were observed by the respondent until May 1, 1941.

4. The negotiations in 1941

In March 1941, the Union negotiated a series of contracts with commercial job printers in Santa Ana and with three weekly newspapers in the vicinity. These contracts raised the hourly wage rate of the printers involved from $1 an hour to $1.07 an hour up to October 1, 1941, and to $1.12 an hour from October 1, 1941, to October 1, 1942. On April 3, 1941, the Union addressed a letter to the respondent advising it of the aforesaid contract with the printing establishments in the vicinity, and requesting a conference for the purpose of negotiating a collective bargaining agreement for 1941. Pursuant thereto, a meeting was held early in April between representatives of the Union and C. H. Hoiles. Brown notified Hoiles of the contract between the Union and the job printers and weekly newspapers, contended that the wage rates established thereby were the prevailing wage rates in the

community, and requested Hoiles to meet the rate. Hoiles stated that while the respondent was financially able to grant the increase requested, it would not do so because that would necessitate increasing the wages of employees in other departments. Hoiles countered with a proposal that the workweek be increased from 37½ to 40 hours, thus eliminating overtime pay for the extra 2½ hours a week in the event that the printers worked as much as 40 hours during a given week. Brown rejected this proposal but agreed to submit it directly to the union membership. The Union again requested that any agreement reached between the parties be signed and Hoiles maintained the position which he had taken throughout the negotiations that the respondent would not sign a contract with the Union. The apprenticeship question was also discussed at length and both parties took the same position on this issue which they had assumed during the 1940 negotiations.[5]

On April 18, 1941, the parties met again and the Union notified C. H. Hoiles that its members had rejected the proposed increase of the workweek to 40 hours at straight-time pay. After some discussion on the wage issue the Union requested the respondent to make a new offer but Hoiles declined to do so. Brown then asked Hoiles to fix a date for a further conference. Hoiles replied that the parties could meet again but that it would be useless; that they could talk about the war or the weather, but there would not be any increase in wages. A meeting was nevertheless scheduled for April 26. On that day, as he waited for C. H. Hoils at the respondent's office, Brown was notified that the meeting would not take place, but the Union would receive a written statement with regard to the respondent's position.

On April 29, 1941, the Union received a letter from the respondent, dated April 26, which read:

[5] In its exceptions the respondent contends that the term "full control of apprentices," when interpreted in the light of the evidence in the record, actually meant and was understood by the parties to mean that the respondent merely desired to employ five apprentices, which the ITU constitution would have permitted, instead of three, as provided in the agreement in effect prior to 1940, and that such apprentices be permitted to receive training on typesetting machines prior to the 6th year of their apprenticeship. While it is true that Brown, when asked what position the respondent had taken on the apprentice issue during the conferences in April 1941, testified that Hoiles stated that he "believed that an apprentice should be allowed to work on a machine before his sixth year," there is no evidence in the record that the respondent departed from the position relative to apprentices which it first took at the beginning of negotiations in 1940. Duke and Brown testified that the respondent's proposal at that time was for "full control over apprentices both as to the number and as to the work they were doing during their apprenticeship." Likewise, on cross-examination, Hoiles was asked if it were not a fact that the respondent "at all times" insisted that it be given complete control over apprentices "as to the number and the work to be done," and replied in the affirmative. As will be noted, this is the same position reflected by the respondent's letter of April 26, 1941, hereinafter set forth, wherein it is stated, "Also, we are to have complete control of the number and work of our apprentices, as we see fit for efficient operation of our plant." Under these circumstances we find, as did the Trial Examiner, that throughout the negotiations the respondent insisted on "full control" of apprentices, as the term implies.

In accordance with our recent negotiations, the Board of Directors of the Register Publishing Co., Ltd., have authorized me to place this proposition before you in writing.

Namely, we are willing to allow our printers to work forty (40) hours a week, instead of 37½, at the same rate they are now getting $1 an hour. This will give them a weekly increase of $2.50, or approximately $130 a year.

Also, we are to have complete control of the number and work of our apprentices, as we see fit for efficient operation of our plant.

Hoping this meets with your approval, we are,

Very truly yours,

REGISTER PUBLISHING CO., LTD.,
(s) C. H. HOILES, *Secretary-Treasurer.*

Following receipt of the respondent's letter Brown met with Hoiles on the afternoon of April 30, 1941, and urged him to confer further with the Union in an effort to settle the controversy. Hoiles stated that the respondent's final position on the matter was expressed by the letter of April 26. Brown advised Hoiles that the Union could not accept the respondent's proposals.

On the evening of April 30, 1941, the Union met, and Brown reported on the negotiations with the respondent. A general discussion then ensued with respect to the respondent's refusal to sign an agreement with the Union, its insistence on abolishing the closed shop, and the position which it had maintained throughout the negotiations relative to the matter of apprentices and a wage increase.[6] As a result of this discussion, a strike vote was taken and the Union voted to go out on strike.

5. The strike and the events subsequent thereto

The strike began on the evening of April 30, 1941. All the employees in the composing room went out on strike that evening or the

[6] The respondent contends that the evidence establishes that the only points in issue between it and the Union when the strike was called were the matters of apprentices and a wage increase. In support of this, the respondent points to the fact that these are the only two matters adverted to in its letter of April 26, 1941. On this point, the evidence discloses, as found above, that at the conference early in April 1941, the Union repeated its previous request that any agreement reached between the parties be signed, and Hoiles stated that the respondent would not sign an agreement. There is no evidence that the respondent at any time thereafter receded from this position. Likewise, there is no evidence that the respondent ever receded from its position taken at the beginning of negotiations relative to the closed shop. On the other hand, the evidence is undisputed that the Union considered that both the matters of a signed agreement and a closed shop were in issue, as well as apprentices and a wage increase, since at the meeting when the strike vote was taken these matters were discussed as points of difference between the Union and the respondent. Under these circumstances we find, as did the Trial Examiner, that throughout the negotiations the respondent did not recede from its position that it would not agree to a closed-shop provision or sign a contract with the Union.

next morning with the exception of the foreman and one apprentice.[7]

On April 30, 1941, the night the strike began, C. H. Hoiles called union-member William Bray into his office, and requested him to return to work the next day, promising him $1.50 an hour for overtime work in addition to his regular wages. Bray replied that the respondent might conclude to execute a contract with the Union within a day or so, in which event he would have incurred the displeasure of the Union by returning to work. According to Bray's testimony, Hoiles replied, "We will not sign up in two or three days and we will never sign with the Union." When Bray explained that he would be fined $1000 by the Union if he returned to work during the strike, Hoiles offered to take care of any fine imposed by the Union. Bray stated that he "would have to go home and talk it over with my wife." Although Hoiles denied, in part, this conversation, we credit the testimony of Bray, as did the Trial Examiner.

On May 1, 1941, R. C. Hoiles,[8] the respondent's president, visited Bray's home and spoke to the latter's wife. Hoiles requested Mrs. Bray to use her influence to induce her husband to return to work. When Mrs. Bray referred to the possibility of a $1000 fine if her husband did so, Hoiles offered to post $1000 in a bank in escrow to provide for that contingency, and, in addition, offered to furnish all the money which she needed for her immediate use. Mrs. Bray refused. During the conversation Hoiles stated that he did not believe in unions and that his self-respect prevented him from taking back the union men.

On May 2 or 3, Duke met C. H. Hoiles and advised him that the Union was still willing to negotiate with the respondent. Hoiles replied that any of the strikers who desired to return to work would be considered individually.

On May 4, 1941, R. C. Hoiles visited Bray at his home and offered him $40 a week if he would return to work. Bray refused. During the conversation, R. C. Hoiles stated that difficulties with the ITU on a prior occasion had cost him $8000 and that he would never have anything to do with it.

On May 5, 1941, Clarence Liles, business agent for the Allied Printing Trades, called on C. H. Hoiles and advised him that the stereotypers employed by the respondent would not pass through the picket line established by the Union.[9] Liles told Hoiles that if the picket line were removed or the printers came back to work, the stereotypers would return to work. Hoiles replied that, so far as the members of

[7] The foreman was W. A. Lawrence. His name was erroneously included in the complaint as one of the employees refused employment by the respondent because of participation in the strike but was stricken therefrom during the hearing on motion of counsel for the Board.

[8] Although R. C. Hoiles was present during the hearing he did not testify.

[9] The stereotypers have not yet returned to work and their places have been filled by new employees.

the Union were concerned, they would never come back.[10] On May 5, one striking printer returned to work [11] and by May 6, 1941, all the remaining employees who were on strike were replaced by new employees.

During May 1941, a conciliator of the United States Department of Labor conferred separately with the Union and the respondent and urged both to submit the dispute to arbitration. The Union agreed to do so but the respondent refused.

On July 25, 1941, the Union held a meeting and, as a result thereof, addressed the following letter to the respondent:

> At a meeting of Santa Ana Typographical Union #579, held on Friday, July 25, the following action was taken by unanimous vote:
>
> The Union requests a meeting with the Santa Register Publishing Company for the purpose of renewing negotiations and reaching an agreement for the reinstatement of the former union employees of The Santa Daily Register.
>
> Yours truly,
>
> SANTA ANA TYPOGRAPHICAL UNION #579,
>
> (s) J. W. JONES, *President.*
>
> (s) O. E. FISHER, *Secretary.*

On August 2, 1941, the respondent replied as follows:

> We acknowledge receipt of your letter of recent date which advises us of the action of your Union as of July 25th last.
>
> The Santa Ana Register has never refused to negotiate with you and will not refuse to negotiate with you now. Before sitting down with you, however, we should point out that since your members went out on strike on May 1st last, nearly three months ago, it has been necessary for us to employ others to take the places of those who went out on strike.
>
> These new employees have now become a part of the establishment and we do not feel, in fairness to them, that we can replace them now. Furthermore, shortly after your members went out on strike, we offered, through your Mr. Duke then local President, to take back any of your members who were out on strike, whom we believe could be utilized if they returned to The Register because of vacancies we had at that time. These men did not

[10] This finding is predicated upon the testimony of Liles and Edward Saleh, a stereotyper present at the conferences. C. H. Hoiles testified, however, that the statement which he made was, "What if they never come back?" We credit, as did the Trial Examiner, the Liles-Saleh version of the statement.

[11] The printer who returned to work was C. C. Thrasher. His name was erroneously included in the complaint but was stricken therefrom during the hearing on motion of counsel for the Board.

return, however, and it was necessary to fill the vacancies by employing others who are now a part of our staff.

On behalf of the Management I also feel it necessary to indicate to you that there has been no change in our situation since the Union and the Management found it impossible to get together on the questions of increased wages and apprentices.

If you wish to sit down with us, in view of what I have written, the Management will certainly not refuse to confer with you. We think it only fair, however, that before doing so you should be given our attitude, as outlined above.

Sincerely,

REGISTER PUBLISHING CO., LTD.,
By (s) C. H. HOILES.

There were no further conferences or communications between the Union and the respondent after the above letter. The strike was still in progress at the time of the hearing and none of the 18 striking employees listed in Appendix A, attached hereto, had returned to work.

6. Concluding Findings

The complaint alleges that the respondent refused to bargain in good faith with the Union on March 1, 1940, and at all times thereafter, and that the strike which began on April 30, 1941, was caused by these unfair labor practices on the part of the respondent. The respondent contends that it has bargained in good faith with the Union in an effort to reach an agreement but that an impasse was reached on or about April 30, 1941, because of the failure of the parties to agree regarding the particular terms of such an agreement and that the strike was called by the Union as a result thereof.

It is clear, however, from the facts recited above, that the respondent has failed and refused to bargain collectively with the Union throughout the period of negotiations. The refusal of the respondent to reduce any agreement which might be reached to a written signed agreement constituted a refusal to bargain.[12] Moreover, the duty imposed by the Act "encompasses an obligation to enter into discussion with an open and fair mind and with a sincere purpose to find a basis of agreement concerning the issues presented * * *"[13] Although the Act does

[12] *Matter of H. J. Heinz Co.* and *Canning and Pickle Workers, Local Union, etc.*, 10 N. L. R. B. 963 aff'd 311 U. S. 514.

[13] *Matter of Singer Manufacturing Co.* and *United Electrical, Radio & Machine Workers of America, Local No. 917, affiliated with the Congress of Industrial Organizations*, 24 N. L. R. B. 444, 464, enf'd as mod. *Singer Mfg. Co.* v. *National Labor Relations Board*, 119 F. (2d) 131 (C. C. A. 7), cert. den. 313 U. S. 595; *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91, (C. C. A. 5) enf'g as mod. *Matter of Globe Cotton Mills* and *Textile Workers Organizing Committee*, 6 N. L. R. B. 461; *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3), enf'g *Matter of Griswold Mfg.*

not require that an employer agree to any particular terms and failure to conclude an agreement may not alone establish a refusal to bargain, nevertheless, such matters may be relevant, in conjunction with the entire course of conduct, in evaluating the intent of the parties. In view of the past relationship between the parties, including the closed shop, apprentice control, and the payment of prevailing rates, the respondent's insistence, without any justification shown, that the Union surrender benefits it had gained, is the very antithesis of any desire to reach a mutually acceptable agreement. The respondent's refusal to arbitrate the matters in dispute, establishes that it was not concerned with the merits of the substantive issues but was determined rather to deny to the Union the benefits of a collective agreement. That this was its motive is established by the respondent's anticipatory refusal to reduce to writing and make contractually binding any agreement which might be reached. Further proof is found in the admissions, during the strike, of H. C. Hoiles that the respondent would "never sign with the Union" and of R. C. Hoiles that he "did not believe in unions" and "would never have anything to do with [the ITU]." Finally, the respondent's refusal to bargain during the strike by requiring that reinstatement of the strikers be considered on an "individual" basis and by removing the basis for negotiations by permanently replacing the union members, conclusively establishes the respondent's determination to evade its statutory obligation.

We find that on March 1, 1940, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit in respect to rates of pay, wages, hours of work, and other conditions of employment, and that by such refusal, and by the statements made to Bray and his wife by C. H. and R. C. Hoiles and the inducements offered by the respondent to persuade Bray to cease his concerted activity and abandon the Union, the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that the strike which began on April 30, 1941, was the result of the respondent's refusal to bargain with the Union and that it was prolonged thereafter because of the continued refusal of the respondent to bargain with the Union.

C. *Refusal to reinstate the strikers*

The complaint alleges that on or about July 29, 1941, and at all times thereafter, the respondent discriminated with regard to the hire and

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Co. and *Amalgamated Association of Iron, Steel and Tin Workers etc.*, 6 N. L. R. B. 298; *National Labor Relations Board* v. *Westinghouse Air Brake Company*, 120 F. (2d) 1004 (C. C. A. 3) enf'g as mod. *Matter of Westinghouse Air Brake Company* and *United Electrical, Radio and Machine Workers etc.*, 25 N. L. R. B. 1312.

tenure of employment of the employees listed in Appendix A, attached hereto, because of their membership in the Union and participation in the strike. Since, as found above, the striking employees ceased work as a consequence of the respondent's unfair labor practices, they remained employees within the meaning of the Act and the respondent was under a duty not to discriminate in regard to their hire and tenure of employment.

As shown above, the Union's letter of July 25, 1941, requested a meeting with the respondent for the purpose of "reaching an agreement for the reinstatement" of the striking employees. In its reply of August 2, 1941, the respondent stated, in substance, that because the striking employees had refused to return to work their positions had been permanently filled by new employees who would not be displaced to afford positions for them. Thus, by this letter the respondent put the Union upon notice that the striking employees were no longer considered its employees and in fact, had been discharged and replaced by new employees. In discharging these employees, the respondent unlawfully discriminated in regard to their hire and tenure of employment.[14] By its letter of August 2, 1941, advising the Union of this action, the respondent precluded any possibility of the striking employees obtaining reemployment and thereby relieved them of the necessity of making formal application, since such application, under the circumstances, would have been a "useless gesture." [15]

We find that the respondent on August 2, 1941, and thereafter, discriminated against the striking employees listed in Appendix A, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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[14] *Black Diamond Steamship Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2) cert. den. 304 U. S. 579; *Great Southern Trucking Co.* v. *National Labor Relations Board*, 127 F. (2d) 180 (C. C. A. 4); *El Paso Electric Co.* v. *National Labor Relations Board*, 119 F. (2d) 581 (C. C. A. 5).

[15] *Matter of Eagle-Picher Mining & Smelting Company, a corporation, and Eagle-Picher Lead Company, a corporation, and International Union of Mine, Mill & Smelter Workers, Locals Nos. 15, 17, 107, 108, and 111*, 16 N. L. R. B. 727, mod. and enf'd. *Eagle-Picher Mining & Smelting Company* v. *National Labor Relations Board*, 119 F. (2d) 903 (C. C. A. 8).

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist from such practices and to take certain affirmative action designed to effectuate the policies of the Act. We have found that the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate bargaining unit. We shall, therefore, order the respondent, upon request, to bargain with the Union as such representative.

We have found further that the respondent discriminated against the employees listed in Appendix A, attached hereto, because they had gone on strike in protest against the respondent's unfair labor practices. We shall, therefore, order the respondent to offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.[16] The reinstatement shall be effected in the following manner: All employees hired after April 30, 1941, the date of the commencement of the strike, shall, if necessary to provide employment for those who are to be reinstated, be dismissed. If, however, by reason of a reduction in force, there are not sufficient jobs immediately available for the remaining employees, including those who are to be reinstated, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees thus laid off, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence and shall, thereafter, in accordance with such list, be offered employment as it becomes available and before other persons are hired for such work. We will further order that the respondent make whole the employees listed in Appendix A, for any loss of pay they may have suffered by reason of the respondent's discrimination against them by payment to each of them of a sum of

[16] Our order requiring reinstatement and back pay is based not only upon the fact that such an order is appropriate to remedy the respondent's unfair labor practices in discharging these employees but also, and independently, upon the ground that since the strike was caused and prolonged by the respondent's refusal to bargain collectively, an order requiring reinstatement with back pay is appropriate to effectuate the policies of the Act. *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. (2d) 61 (C. C. A. 2) aff'd 309 U. S. 629; *National Labor Relations Board* v. *Acme-Evans Co.* (C. C. A. 7) decided June 15, 1942; *Matter of McKaig Hatch Inc.* and *Amalgamated Association of Iron, Steel, and Tin Workers etc.*, 10 N. L. R. B. 33; *Matter of Western Felt Works, a corporation* and *Textile Workers Organizing Committee, etc.*, 10 N. L. R. B. 407.

money equal to the amount which he would normally have received as wages from August 2, 1941, to the date of the respondent's offer of reinstatement, or placement on a preferential list, less his net earnings,[17] if any, during such period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Santa Ana International Typographical Union No. 579 is a labor organization, within the meaning of Section 2 (5) of the Act.
2. All employees in the composing room of the respondent's Santa Ana plant, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.
3. Santa Ana Typographical Union No. 579 was on March 1, 1940, and at all times since has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.
4. By refusing to bargain collectively with Santa Ana Typographical Union No. 579 as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.
5. By discriminating in regard to the hire and tenure of employment of the employees listed in Appendix A, thereby discouraging membership in the Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.
6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act,

[17] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation* v. *National Labor Relations Board*, 311 U. S. 7.

the National Labor Relations Board hereby orders that the respondent, Register Publishing Co., Ltd., Santa Ana, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Santa Ana International Typographical Union No. 579 or any other labor organization of its employees by discharging, refusing to reinstate, or in any other manner discriminating in regard to hire and tenure of employment or any term or condition of employment of any of its employees;

(b) Refusing to bargain collectively with Santa Ana International Typographical Union 579 as the exclusive representative of all employees in the composing room of the respondent's Santa Ana plant;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Santa Ana International Typographical Union No. 579 as the exclusive representative of all the employees in the composing room of the respondent's Santa Ana plant in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Offer to the employees listed in Appendix A, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, such offer to be effected in the manner provided for in the section entitled "The remedy," placing those employees for whom no employment is immediately available upon a preferential list in the manner therein set forth, and thereafter offer them employment as it becomes available;

(c) Make whole the employees listed in Appendix A for any loss of pay they may have suffered by reason of respondent's discrimination against them by payment to each of them of a sum of money equal to that which he normally would have earned as wages from August 2, 1941, to the date of the offer of reinstatement, or placement on a preferential list, less his net earnings during said period;

(d) Post immediately in conspicuous places at its Santa Ana plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order;

(2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that its employees are free to become or remain members of Santa Ana International Typographical Union No. 579, and the respondent will not discriminate against any employees because of membership or activity in that organization;

(e) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.

APPENDIX A

A. L. Berkland
F. L. Berkland
C. W. Brakeman
William O. Bray
C. J. Bronzen
Charles Clayton
G. W. Duke
E. W. Ellis
W. H. Fields
G. L. Hawk
J. W. Jones
L. C. McKee
J. W. Parkinson
J. H. Patison
J. A. Sherwood
V. C. Shidler
J. E. Swanger
E. Y. Taylor